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Supreme Court, U.S.
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No. (1)

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In The Supreme Court of the United States

JOSEPH DEAN, et al.,

Appellants,

v.

LARRY LEAKE, et al.,

Appellees,

and

NORTH CAROLINA STATE CONFERENCE OF BRANCHES OF THE NAACP,

Appellee-Intervenor.

On Appeal from the United States District Court
for the Eastern District of North Carolina
Northern Division

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1. Whether a jurisdiction's use of erroneous census data when it knew that more accurate enumerated census data was available meets the jurisdiction's obligation to make an honest and good faith effort to construct districts as nearly of equal population as practicable?

2. Whether the court below erred in using erroneous census data used by the jurisdiction in measuring whether the challenged plan had a maximum population deviation of 10% or higher?

PARTIES TO THE PROCEEDING

Appellants are Joseph Dean, Alfred Freimark, Homer Marshall, Jack Steer, Mikele Haywood, Kimberley Hendrix, Dena Barnes, Dwight Story, Robert Rucho, William (Frank) Mitchell, Mike Clampitt, Eric Weaver and Leon Bonner. Appellees are Larry Leake, in his; Genevieve C. Sims, Robert B. Cordle,; Lorraine G. Shinn,; and Charles Winfree, Gary Bartlett,; and Roy Cooper,. Appellee-Intervenor is North Carolina State Conference of Branches of the NAACP. All individual Appellees were sued in their official capacities.

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IN THE

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On Appeal from the United States District Court for the Eastern District of North Carolina, Northern Division

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JURISDICTIONAL STATEMENT

OPINIONS BELOW

The three-judge District Court's opinion is not yet reported except in Westlaw 2008 WL 728543 and reprinted at pages App.1 to App.26 of the Appendix to this Jurisdictional Statement ("J.S. App.").

JURISDICTION

The District Court denied Appellants' claim for injunctive relief and entered judgment on March 17, 2008. J.S . App. A. Pursuant to 28 U.S.C. § 2101(b), Appellants filed timely notices of appeal on March 20, 2008. J.S. App. B. This Court's jurisdiction is invoked under 28 U.S.C. § 1253.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution provides: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; ... nor deny to any person without its jurisdiction the equal protection of the laws." Appellants asserts that its associational rights and its rights to equal protection of the law have been violated by the adoption and enforcement of the challenged redistricting plan in that the plan violates the one person, one vote principle.

The statutory provision involved in this case is 42 U.S.C. § 1983. Appellants asserts that the challenged state legislative redistricting scheme infringes on their fundamental right to vote and the case law which holds that their votes should not be unfairly diluted by an election mechanism which discriminatorily weights some votes more than others in violation the one-person, one-vote principles of *Reynolds vs. Sims* 377 U.S. 533(1964), *Larios vs. Cox* 300 F.Supp. 1320 (N.D.Ga) Summ. Aff'd 542 U.S.947 (2004).

STATEMENT OF THE CASE

Appellants seek reversal of a preliminary injunction decision of a three-judge district court that effectively determined the outcome of Appellants claims by making an error of law regarding the proper standard for the court to use in assessing the overall range of population deviation a court should use to assess violations of one person, one vote. The three-judge district court made two key errors.

First, the District Court erroneously held that the jurisdiction's use of census data known by it to be mathematically erroneous instead of the corrected enumerated data which was available at the time of the enactment of jurisdiction's plan met the jurisdiction's obligation to make an honest and good faith effort to construct districts as nearly of equal population as practicable under *Reynolds* and its progeny.

Second, the District Court below erred in using this same erroneous census data used by the jurisdiction in measuring whether the challenged plan had a maximum population deviation of 10% or higher?

Factual History

A summary of most of the relevant facts and background information are set forth in the Opinion of the three judge District Court[1] however the facts

[1] A three judge district court was properly convened it was composed of Allyson K. Duncan, Circuit Judge, Louise W.

described below are particularly pertinent to this case.

After the completion of the 2000 Census the Census Bureau conducted a program to correct processing and tabulation errors that occurred when the original raw enumerated data was being tabulated into its published form. This program was called count question resolution or CQR. This program replaced the post census local review program which the Census Bureau had used after the 1980 and 1990 censuses.[2] The post census local review program produced the enumerated Census corrections which were used by this Court in the case of *Karcher v. Daggett*, 462 U.S. 725, 728 n.1 (1983) the count question resolution program uses only data collected in the original enumerated census, as did the post census local review program, and no additional data are collected.

Typically jurisdictions provide the Census Bureau with Census blocks which they believe to be in error and an explanation of what they believe the error to be. The Census Bureau may review certain results without a request by the jurisdiction if the Bureau believes that an error occurred in a

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Flanagan, Chief Judge for the Eastern District of North Carolina and Robert J. Conrad, Chief Judge for the Western District of North Carolina and currently nominated for the Fourth Circuit Court of Appeals but has not been confirmed.

[2] Count Question Resolution is essentially the same program as post census local review conducted slightly later in the decade. This is because of the attempt by the Census Bureau to use statistical adjustment instead of an enumerated census delayed the beginning of the program.

jurisdiction which did not request a review then the Bureau will notify that jurisdiction by letter. The majority of errors corrected by this process are what are known as "geocoding" errors, that is the total population is correct but it has been placed in the wrong census block. However occasionally either by tabulation error or by improperly including or excluding a census form, the Bureau over or undercounts a census block or blocks and as a result an entire jurisdiction. As a result of the Bureau's investigation into these errors it has to examine the raw census data for individual households and as a result is inevitably aware of all of the errors for all census characteristics on a block by block basis.

All corrections as a result of the count question resolution program were supposed to be sent to the affected jurisdictions by September 30, 2003. If the Bureau made a correction because of the request of the jurisdiction the Bureau would provide a block level correction showing the population and housing count for each block. If however the correction was as a result of the Bureau's own investigation the Bureau would only provide jurisdiction level data down to the smallest jurisdiction affected unless an affected jurisdiction requested block level data. These corrections would show the corrected total population and housing counts for the affected jurisdictions.

By late October, 2003, the North Carolina General Assembly received from the Census Bureau information that the census data, previously provided, regarding the number of persons in various localities throughout the State was in error;

the Census Bureau provided the General Assembly staff responsible for the production of the redistricting maps the corrected figures for the population data.[3]

While this data was available to the state of North Carolina it was not available to the general public and the Census Bureau would not make it available to the general public until June of 2004. The data made available to the public in June reports the corrections at the block level. On March 21, 2000, the Census Bureau released the erroneous population data showing that North Carolina had a population of 8,049,313. On May 1, 2001, the North Carolina General Assembly legislative services office released a Legislator's Guide for redistricting. Under this guide, legislators were advised that the average number of persons each Senator will represent was 160,986 (8,049,313 ÷ 50); and that each Representative will represent an average of 67,078 (8,049,313 ÷ 120).

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[3] The state North Carolina in its initial filing before the District Court indicated that it had not received this information prior to revealing the redistricting scheme during a special legislative session called for that purpose, however at the hearing before the court the state admitted that the legislative staff had received all of the correction letters from the Census Bureau prior to the special session except those concerning 5 counties. These five counties are Craven which increased its total population by 87 people; Edgecomb which had no population changes; Johnston which had a 65 person decrease in total population; Nash which had a 35 person decrease in total population; and Pitt which had a 79 person decrease in total population. The letters received by the staff included the Chapel Hill/Orange County corrections.

The ideal district size for state house districts using the corrected data is 67,054. (8,046,485 / 120) The ideal district size for Senate districts using the corrected data is 160,930. (8,046,485 / 50)[4] Although many of the corrections to the census data are small, an error in the town of Chapel Hill in Orange County was statistically and legally significant because the Census Bureau had over counted 2,696 persons. The state of North Carolina's overall population loss was 2828 people only 132 people more than the loss in the town of Chapel Hill in Orange County alone. Furthermore the Legislature had unnecessarily placed many of the districts near the edge of the 10 percent range of deviation which meant the alteration in ideal district size caused several districts to no longer be in compliance.

This over count, when used in calculating the equal population of election districts caused Orange County to be grouped differently under the North Carolina anti-gerrymandering criteria and caused District 56 in the House and District 23 in the Senate to be under-populated. Notwithstanding receipt of this new information, in November, 2003, the General Assembly adopted redistricting legislation, SL 2003-434, establishing new districts for the State Senate ("2003 State Senate Plan"), and a redistricting scheme for the House ("2003 State House Plan") using census data known to certain members and their staff to be erroneous in that it over counted population in Orange County.

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[4] The complete corrected Census 2000 enumerated block level data for North Carolina is found at http://www.census.gov/prod/cen2000/notes/blks-37.xls.

Moreover, this corrected data was not made generally available to members of the General Assembly outside of the leadership, nor was the public made aware by the General Assembly's leadership that it had in fact received the corrected data.

Using the corrected census data, the smallest House district is District 56 in Chapel hill/Orange County with a total population of 61,127 and a deviation from ideal of -8.84%. Using the corrected census data, the largest House district is District 6 in Beaufort and Pitt Counties with a total population of 70,689 and a deviation from ideal of +5.42%.[5] The overall range of deviation in the House of Representative is 14.26%. This is well in excess of the 10% deviation allowed for state legislative plans without justification by a legitimate consistently applied state policy by either the U.S. or N.C. Constitutions. Other districts which are under represented in excess of the 10% overall range are listed in Appendix C. Over two fifths of the House of Representatives districts are overpopulated in excess of the 10 percent overall range.

Using the corrected census data, the smallest Senate district is District 23 in Orange and Person Counties with a total population of 151,154 and a deviation from ideal of -6.07%. Using the corrected

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[5] Pitt County is one of the 5 counties which the state North Carolina asserts it did not receive from the Census Bureau prior to the special session. Accepting the state's assertion as true the most overpopulated district would be House District 35 with a total population of 70,471 and a deviation from the ideal of +5.10%. The overall range of deviation in the House of Representatives then would be 13.94%.

census data, the largest Senate district is District 17 in Wake County with a total population of 169,010 and a deviation from ideal of +5.02%. The overall range of deviation is 11.09%. Other Senate districts which are overpopulated in excess of the 10% overall range include, 21, 39, 19, 42, 10, 18, 33, 26, 8. This constitutes one fifth of the Senate. Other Senate districts which are under represented in excess of the 10% overall range include listed in Appendix D.

As noted by the District Court the people of North Carolina through their constitution have attempted to address the legislature's historical gerrymandering by eliminating the Legislature's discretion and requiring that legislative districts are drawn according to a formula to the greatest extent possible. This is accomplished by requiring individual counties to be placed into groups based upon their population. Because all the county groups fit together like a puzzle any change in the county groupings, such as the changes dictated by the use of the corrected enumerated census data, can have a large ripple effect on a plan. Likewise if County populations are close to the population which will cause a change in the county groupings even small population changes can have a dramatic effect on the redistricting scheme.

THE QUESTIONS ARE SUBSTANTIAL

I. FAILURE TO DECIDE THIS ISSUE AT THIS TIME WILL RESULT IN CONTINUING, PERMANENT UNREMEDIBLE HARM TO APPEALLANTS AND OTHERS SIMILARLY SITUATED

The preliminary injunction opinion of the court below applies an erroneous standard of federal law, in that a court measuring an equal protection violation should not use the most accurate enumerated census data available to the drafter of the redistricting scheme at the time of its enactment. Without appellate intervention by this court, it is unlikely that the appellants will persuade the court that the legal standard it has applied is in error. This error of law effectively decides the case.

Because the right to cast an equally weighted vote is protective of all other rights, deprivation of this right is irreparable. The violation of a fundamental constitutional right is irreparable harm *per se*. *Elrod v. Burns*, 427 U.S. 347, (1976). *National People's Action v. Village of Wilmette*, 914 F.2d 1008, 1013 (7th Cir. 1990), *citing* Wright & Miller, cert. denied 499 U.S. 921, (1991). *Gutierrez v. Municipal Ct. of S.E. Judicial Dist.* , 838 F.2d 1031, 1045 (9th Cir. 1988), *Mitchell v. Cuomo*,748 F.2d 804, 806 (2nd Cir. 1984), *Planned Parenthood v. Citizens for Community Action*,558 F.2d 861, 867 (8th Cir. 1977), all citing Wright & Miller.

Traditional adjudication would be unlikely to correct this error for several years. In the interim the voters of North Carolina would continue to be deprived of equal protection under either the federal or state constitutions. As was alluded to in the court opinion below, there has been a decade of state litigation in which the legislature has been involved in enacting and conducting elections repeatedly under unconstitutional schemes (footnotes 3, 4, 5,

slip opinion Appendix A). The historical record of non-compliance with both federal and state law during this decade shows that no election since 2000 was conducted under a plan which meets both federal and state constitutional criteria and merely acts to enhance the irreparable harm which continues to linger.

The issue upon which review is sought is purely a matter of law. Traditional adjudication could result in this error of law not being corrected or applied until well after the 2010 elections, when the issue would become moot because a new statute would be drafted following the completion of the 2010 census. Should the court determine the legal issue, then the parties would be benefited by having an early decision which could be implemented in the 2009 legislative term in time to provide an effective remedy.

A clarification of the legal issue would effectively end the litigation in one of two results. A summary reversal would result in having districts redrawn according to equal protection principles throughout the state. An affirmance would practically end the litigation, since the District Court's error of law precludes the ability to state a one person, one vote claim. If this court affirms a companion case it is currently considering, *Bartlett vs. Strickland* (07-689), the North Carolina Legislature will have to redraw its legislative maps to comply with the remedy previously ordered in *Pender County vs. Bartlett* 361 N.C. 491, 649 S.E.2d 364 (N.C., 2007) by the Supreme Court of North Carolina. If this court affirms the preliminary

injunction opinion of the lower court, then the North Carolina Legislature will again use the erroneous census data in the 2009 redistricting. In any event both parties and the public would be benefited by the earliest resolution of this issue.

II. THE GENERAL ASSEMBLY USED THE ERRONEOUS CENSUS DATA IN ORDER TO INTENTIONALLY INCREASE THE INFLUENCE OF VOTERS BASED ON WHERE THEY LIVED IN PARTICULAR THE VOTERS IN CHAPEL HILL.

As this Court has recognized, "no right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right." *Wesberry vs. Sanders*, 376 U.S. 1, 17 (1964). The General assembly of North Carolina has been the "poster child" for bad redistricting behavior in the last four decades if not much earlier in history. The General Assembly of North Carolina has continued this tradition by refusing to enact a legal and constitutional redistricting plan for the General Assembly since the 2000 election. As a result elections for the General Assembly in North Carolina have taken place in 2002, 2004 and 2006 under illegal election districts in most of the state and the maps as in the last decade have remained in perpetual litigation. If plaintiffs are not granted relief the result will be that the General Assembly will be rewarded for its intentional delaying tactics by having 80 percent of

the legislative elections conducted in this redistricting cycle under illegal redistricting schemes and if their past conduct is a predictor of their future conduct then we can rest assured that they will take any delay as an opportunity to conduct the 2010 elections under an illegal districting scheme is well.

As the most recent decision regarding this area of the law stated "forty years of Supreme Court jurisprudence have established that the creation of deviations for the purpose of allowing the people of certain geographic regions of a state to hold legislative power to a degree disproportionate to their population is plainly unconstitutional." *Larios v. Cox*, 300 F. Supp. 2d 1320 (2006) *sum. Aff'd.* 542 U.S. 947 (2004) The *Larios* Court continued "Discrimination against certain voters based on the fortuity of where in the state they live cannot be reconciled with the command of *Reynolds:* '[t]he fact that an individual lives here or there is not a legitimate reason for overweighting or diluting the efficacy of his vote.... [T]he basic principle of representative government remains, and must remain, unchanged-the weight of a citizen's vote cannot be made to depend on where he lives.... A citizen, a qualified voter, is no more nor no less so because he lives in the city or on the farm. This is the clear and strong command of our Constitution's Equal Protection Clause. This is an essential part of the concept of a government of laws and not men. This is at the heart of Lincoln's vision of "government of the people, by the people, [and] for the people." The Equal Protection Clause demands no less than substantially equal state legislative representation for all citizens, of all places as well as

of all races.'" *Id* at 1342 citing *Reynolds v. Sims*, at 377 U.S. at 567-68.

The *Reynolds* Court cited above held that "an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State." *Reynolds* at 568,. "[A]ll voters, as citizens of a State, stand in the same relation regardless of where they live. Any suggested criteria for the differentiation of citizens are insufficient to justify any discrimination, as to the weight of their votes, unless relevant to the permissible purposes of legislative reapportionment.... **Diluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment just as much as invidious discriminations based upon factors such as race or economic status.**" *Id* at 565-66 (emphasis added).

In this case voters in Orange County, as well as other intentionally under populated districts, as indicated in Appendix E, were intentionally favored in order to further the political needs of specific incumbents, including the former Majority Leader who is now the Speaker, in the North Carolina General Assembly. As a result of this intentional under population of Orange County districts in both the North Carolina House and Senate voters elsewhere in the state were intentionally discriminated against by having their votes diluted because their districts were overpopulated and hence underrepresented as a result of this intentional use

of the erroneous census reports and a refusal to use or reveal the corrected census data. As a result of this intentional discrimination over one fifth of North Carolina citizens live in overpopulated and hence underrepresented Senate districts in excess of the 10 percent range which this Court has found to establish a prima facie case of a violation of the equal protection clause of the Fourteenth Amendment based on the principle of one person one-vote. Likewise over two fifths of North Carolina citizens are similarly underrepresented in overpopulated North Carolina House of Representatives districts. This discrimination is even greater in North Carolina because of the effect that using the erroneous census data, as opposed to the corrected census data which was available at the time that the North Carolina General Assembly constructed its redistricting scheme in 2003, has on how the counties are grouped according to the North Carolina anti-gerrymandering criteria. As a direct result of this intentional use of erroneous census data a majority of the state's voters are in illegal election districts under either state or federal law. This both violates the anti-gerrymandering policy behind the state criteria as well as causing numerous voters to be placed in illegally constituted districts when other voters in the state have been able to vote in the last two election cycles in legal districts violating the equal protection and due process clause of the Fourteenth Amendment. (See *Bush v. Gore*, 531 U.S. 98 (2000) The Constitution does not create a right vote for President or for electors for President, [or in this case districts that comply with the state's gerrymandering provisions] that is a state created right but once given the

Fourteenth Amendment does require that such a right comply with equal protection and due process.) Over three-quarters of the state's voters are in illegal Senate districts if the corrected census data is applied to the *North Carolina anti-gerrymandering* criteria. Nearly three-quarters of the state's voters are in illegal House of Representatives districts if the corrected census data is applied to the *North Carolina anti-gerrymandering* criteria.

In 2003 Democratic Speaker Black engaged in bribery of one or more of the then Republican legislators *U.S. v. Black,* 490 F.Supp.630 (E.D.N.C., 2007)] in order to retain control of the North Carolina House of Representatives one of the principal reasons why he took such drastic steps was so that he could enact the redistricting scheme which is the subject of this litigation. A grand jury is still investigating the full extent of the bribery scandal. A small number of Republicans in an addition to Rep. Decker joined with Speaker Black in order to allow the Democrats to retain control of the North Carolina House of Representatives, principal among these was former Rep. Richard Morgan who was named co-speaker[6].

Of all the corrections made to the Census Bureau as part of the Count Question Resolution program (CQR) the most significant is the 2696 person over count in Orange County. North Carolina's Census 2000 total population was reduced by 2828 people as a result of the CQR program. The

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[6] Rep. Morgan was subsequently defeated in a Republican primary.

state's overall population loss is only 132 people than the population loss in Orange County alone. Unlike other jurisdictions the Census Bureau did not provide block level data to the legislative staff for the Orange County over count. This however should not have prevented the legislative staff and legislative leadership from incorporating this correction into the subsequent redistricting. Block level data is important in redistricting because when a larger unit of geography, such as a county or city is divided the block level data is necessary in order to get an accurate count of the district population. However if the larger unit of geography which wholly contains the correction is in turn wholly contained within the district then the block level data is unnecessary in order to accurately correct the district because you know the district in which the entire error is located. The error in the Orange County Census count is wholly contained within the Town of Chapel Hill contained in Orange County (the error appears to be wholly contained on the campus of the University of North Carolina). Chapel Hill had a population of 48,715 under the erroneous census count and a population of 46,019 under the corrected census count. The ideal district population under the corrected census count is 67,054 people for a House of Representatives district and 160,930 for a Senate district. If that portion of the Town of Chapel Hill which is located in Orange County is wholly incorporated into a single House district and a single Senate district the block level data is unnecessary in order to correct the district's population. You simply subtract it from the totals for those two districts.

In the actual redistricting scheme enacted by the North Carolina Legislature Orange County and the Town of Chapel Hill were wholly contained within Senate District 23. At the time this district was drawn the legislative staff and the legislative leadership knew or should have known that this district had been over counted by exactly 2696 people. The corrected enumerated census total population for the town of Chapel Hill is approximately two-thirds of the total population of an ideal house district and therefore could be easily wholly incorporated into a single house district eliminating any need for block level data. In the actual House redistricting scheme, the University of North Carolina campus which is where the error occurred, is wholly contained in House District 56, over 90% of the Town of Chapel Hill is also contained in the District. This means that the legislative leadership would have been virtually certain that the entire Chapel Hill Census error was wholly contained in District 56 and indeed the error is wholly contained within that district.. Then as if to add insult to injury the legislative line drawers proceeded to under populate House District 56 by an additional 3231 people. The amount that the Legislature intentionally under populated House District 56 plus the amount of the over count is over two times greater than the population of the town of Chapel Hill that was not included in District 56 as drawn in the legislature's 2003 redistricting scheme. In fact the population of Chapel Hill not included in House District 56 is smaller than the census error. Including the remainder of the town of Chapel Hill into House District 56 would have corrected the census enumeration error and resulted in nearly the

ideal district population and more closely adhered to North Carolina's anti-gerrymandering criteria. Clearly having the block level data in Orange County was not necessary in order to use the corrected Census 2000 enumerated population to create a fair redistricting plan that complied with one person one vote and the North Carolina anti-gerrymandering criteria.

A reduction of more than 1000 people in the population of Orange County was sufficient to alter the county groupings required by the North Carolina Constitution in both the House of Representatives and Senate redistricting schemes. When informed of a census error of nearly three times that scale the legislative staff and legislative leadership knew or should have known that because of the Orange County error the county groupings required by the North Carolina Constitution's anti-gerrymandering criteria were also in error requiring a completely different set of county groupings from those embodied in the Senate and House redistricting schemes. These changes are described in Plaintiffs complaint and initial memorandum in support of the motion for Preliminary injunction.

Furthermore while the legislative staff was clearly made aware of this error by the Census Bureau the principal opponent of the legislative leadership on redistricting, the Senate Minority Leader, Patrick Ballantine was not provided this information. (See Appendix F) The highest-ranking Republican in the House of Representatives was co-speaker Morgan who was in alliance with Speaker Black at the time and as a result was estranged from

his own caucus. The only rational explanation for the legislative staff and leadership to hide this information would be to benefit members of the legislative leadership in the redistricting process.

An examination of the four districts concocted in the four County grouping that included Orange County in the legislature's 2003 redistricting scheme illustrates this point. In the 2003 redistricting scheme Caswell, Orange, Chatham and Moore counties are placed in a single county grouping containing 4 House of Representatives districts. The Orange County electorate is intensely Democrat in its voting behavior. Moore County is heavily Republican. Chatham is more of a tossup Three Democrat incumbents reside in Orange County, including the Democrat Majority Leader, the fourth incumbent in the grouping was co-speaker Morgan who resided in Moore County. When the districts were concocted Morgan's District 52, which was at the far southern end of the county grouping was overpopulated by 3153 people or 4.71 percent above the ideal district size. District 50 which was at the far northern end of the County grouping was under populated by 2580 people. District 56 which was previously discussed above contained a census population error and it was further under populated by over 3000 people which resulted in a total under population of over 5900 people.

The Democrat majority leader's district is composed of part of Orange County, all of Chatham County and part of Moore County. The Majority Leader's district was less than 200 people over ideal population. By manipulating the census error and

the population deviations in these districts the Majority Leader was able to shed a 3100 person area composed predominantly of Republican voters and receive an infusion of highly motivated Democrat voters in Orange County from the nearly 6000 people he gained in Orange County. This manipulation would not have possible with out the census data error. Furthermore if the census error had been corrected the North Carolina anti- gerrymandering criteria would have required all three Orange County Democrat incumbents to be placed in a two county grouping composed of Orange and Caswell counties but containing only two House of Representatives Districts. One of the three Democrats from Orange County, possibly including the current speaker would necessarily have been eliminated from the House of Representatives. This is exactly the type of intentional manipulation of deviations for partisan purposes which are forbidden by *Larios vs. Cox,* 300 F.Supp.2d 1320 (ND Ga.) Sum. aff'd 542 U.S. 947 (2004).

III. THE DISTRICT COURT IS REQUIRED TO USE THE CORRECTED ENUMERATED CENSUS DATA AVAILABLE TO A JURISDICTION WHEN ASSESSING THE LEGISLATIVE REDISTRICTING SCHEME FOR COMPLIANCE WITH THE ONE PERSON, ONE VOTE PRINCIPLE.

The District Court correctly recognized that Plaintiffs/Appellant's would suffer immediate, permanent, irreparable and continuing harm if Defendants were allowed to conduct elections under an unconstitutional redistricting scheme. The

District Court also correctly understood that if the General Assembly's redistricting had an overall range of deviation in excess of 10 percent the deviation must be justified by a legitimate consistently applied rational state policy. As a result the District Court proceeded directly to the issue of whether plaintiffs/appellants could succeed on the merits of their one person one-vote cause of action. The District Court makes its crucial legal error when it reduces its entire legal analysis down to the question of whether the state North Carolina had a legal duty to use the corrected enumerated census data as opposed to the erroneous enumerated census data. *Dean vs. Leake*, 2008 WL 728543, 7. The court essentially says the state of North Carolina has no duty to use corrected enumerated census data instead of erroneous enumerated census data. The court then proceeds to hold that if the state is not required to use the corrected enumerated census data and chooses to use the erroneous data then the court cannot assess the state's compliance with the Fourteenth Amendment's one person one-vote requirement using the corrected enumerated census data but must instead make that analysis using the erroneous census data used by the General Assembly. **As the District Court said its opinion "in the absence of a duty to use the corrected census data, Plaintiffs cannot show a violation of the one person, one-vote requirement."** *Dean* at 8 (emphasis added). By using this analysis the District Court has not only foreclosed Appellants from being able to prove their first cause of action in this case but has also allowed the General Assembly of North Carolina to again use the erroneous census data to construct another redistricting scheme if this

court affirms the North Carolina Supreme Court in *Strickland vs. Bartlett* , *Id.* and the state of North Carolina and is required to create another legislative redistricting scheme. This error of law by the District Court misreads both the letter and spirit of this Court's prior precedents.

In *Karcher vs. Daggett*, 462 U.S. 725, 728 n.1 (1983) this Court assessed New Jersey's congressional redistricting plan based upon the corrected enumerated census data which the state had notice of at that time. The Census Bureau's postcensus local review program, the Census Bureau's predecessor to CQR, released two corrections to the enumerated census data. The first of these corrections increased the total population of the city of East Orange by 665 people.[7] The second correction increased the total population of the city of East Orange by an additional 188 people. This Court correctly used the most accurate enumerated census data available to the jurisdiction at the time that it constructed its redistricting scheme to determine if the redistricting scheme violated the one-person one-vote principle.[8] The District Court

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[7] This correction also included a geocoding error between Evansham and Medford townships in Burlington County.

[8] Furthermore, in *Daggett vs. Kimmelman*, 580 F.Supp. 1259 (D.C.N.J. 1984) which is the *Karcher* case on remand, the District Court required that all plans submitted to the court include the second census correction which was not used when the Supreme Court invalidated the New Jersey redistricting scheme. The state North Carolina may now find itself in the same position as New Jersey was in 1984. The legislative redistricting map has been invalidated by the North Carolina Supreme Court in *Strickland vs. Bartlett*, if this court affirms that decision then this case will

distinguishes the *Karcher* case by stating that this court uses "permissive not mandatory language when referring to the use of corrected census data." *Dean* at 8. the District Court goes on to say "that states conducting redistricting years after the decennial census are operating under a legal fiction." *Id.* This statement by the District Court totally ignores the reason why the so-called legal fiction exists. The decennial census data is the last most accurate depiction of enumerated census data. All other population data is either a statistical adjustment, projection or estimation. Only enumerated census data is usable for apportionment, and has the integrity as well as geographic accuracy necessary for redistricting. *Department of Commerce vs. House of Representatives*, 525 U.S. 315 (1999) see also Scalia concurring at 346. As a result this data remains in use until is replaced by more accurate enumerated census data. The fiction is that enumerated census data maintains the level of accuracy that it had at the time it was initially released however it continues in use because it is still the most accurate enumerated census data. In this case as in the *Karcher* case the corrected data is the last statement of the most accurate enumerated data available to the jurisdiction and therefore should be used by the federal courts to assess redistricting schemes created after the release of the corrected data for their compliance with the one person one-vote mandate of the Fourteenth

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determine which census data will be used to assess one person, one-vote when the map is redrawn.

Amendment irrespective of which data was used by the Legislature.

On June 20, 2002 this Court, in *Utah vs. Evans*, 536 U.S. 452, 462 (2002) addressed a similar issue regarding corrections to the enumerated census results. In that case this Court told the state of North Carolina that if substantial errors, of the type involved in this case, were discovered in the original census and subsequently corrected then the court had the authority to issue appropriate orders based on the corrected census data. In *Evans,* North Carolina, through its Attorney General's office, intervened as a defendant in Utah's challenge to the use of so-called "hot deck imputation" in the 2000 Census. North Carolina's principal argument in this case was that the Census statute essentially prevented any change in the numbers used for reapportionment after their original publication. Seven Justices of this court concurred in the court's decision by Justice Beyer which forcefully disagreed. As the Court stated:

"**We disagree with North Carolina** because we do not read these statutes so absolutely-as if they barred a certificate's revision in all cases no matter what. The statutes themselves do not expressly say what is to occur should the "report" or the "statement" upon which the Clerk's "certificate" rests turn out to contain, or to reflect, a serious mistake. The language is open to a more flexible reading **that would permit correction of a certificate found to rest upon a serious error-say, a clerical, a mathematical, or a calculation error, in census data or in its transposition. And if that error**

is uncovered before new Representatives are actually selected, and its correction translates mechanically into a new apportionment of Representatives without further need for exercise of policy judgment, such mechanical revision makes good sense. In such cases, the "certificate" previously sent would have turned out not to have been a proper or valid certificate, it being understood that these statutes do not bar the substitution of a newer, more accurate version. Guided by *Franklin* [*v Massachusetts,* 505 U.S. 788 (1992)] which found standing despite the presence of this statute, we read the statute as permitting "certificate" revision in such cases of error, and we include among them cases of **court-determined legal error leading to a court-required revision of the underlying Secretarial "report**." So read, the statute poses no legal bar to 'redress.'" *Utah vs. Evans*, 536 U.S. 452, 462 (2002) (emphasis added).

The letters from the Census Bureau conclusively prove that the type of errors corrected in North Carolina in Orange County and elsewhere are exactly the types of errors described by the Court in *Utah vs. Evans*. The letter to the Chairman of the Orange County Commission states that: "[o]ur research found an **error** in the geographic assignment of group quarters in various blocks within the Town of Chapel Hill. In addition, we identified housing units that were **erroneously** included in Census 2000 **due to processing errors.**" Appendix G (emphasis added). It is important to remember that these are errors not in the collection of the census data in 2000 but are

instead errors in adding up that data. These corrected data are not based on any statistical adjustment, estimation or projection but are instead the actual enumerated data properly summed. When the Census Bureau sent the actual corrections on September 30, 2003 they noted: "according to the **official returns** of the TWENTY-SECOND DECENNIAL CENSUS OF THE UNITED STATES, on file in the U.S. Census Bureau, **the count as of April 1, 2000**, for Orange County, North Carolina, are [the corrected population count]" Appendix H (capitalization in original, emphasis added).

In this case the Census Bureau has corrected errors, exactly like those described above, so as to produce a more "accurate version" of the original census 2000 results prior to the enactment of a the redistricting scheme but the District Court ignores the "good sense" this court referred to in *Evans* and similarly ignores the corrected enumerated census data for any determination as to whether such a redistricting scheme would actually comply with the one-person, one-vote principle of the Fourteenth Amendment.

As well as providing this data to the local jurisdictions, as indicated by the Census Bureau's letter of February 20, 2003 this information was also contemporaneously provided to those members of the legislative staff responsible for redistricting data, Mr. Terrence Sullivan, Mr. Bill Gilkeson, Mr. Dan Frey, and Mr. Gerry Cohen. Appendix H. The letter notes that the staff responsible for redistricting data will receive corrections for the block level census data.

The letters clearly indicate that the legislative staff responsible for redistricting data was made aware of the errors in Orange County, as well as other locations in the state, on or about the second week of May 2003, almost exactly six months prior to the enactment of the current legislative redistricting scheme. The letters also indicate that on or about September 30, 2003 the legislative staff responsible for redistricting data were made aware of the numerical values of the errors which had occurred in Orange County and were at that time capable of correcting the population data in North Carolina's redistricting database so as to accurately reflect the correct enumerated Census 2000 population. The legislative staff did not incorporate the corrections to the Census 2000 results which they had received into the population data in North Carolina's redistricting database nor did they inform any of the legislative opponents of the legislative leaderships' redistricting scheme that they in fact were in possession of corrected block level data from the Census Bureau. By hiding the fact that they possessed the block level data they effectively prevented any of the legislative opponents from using the corrected census data to draw redistricting plans which properly grouped counties according to North Carolina's anti-gerrymandering provisions and complied with the one-person one-vote requirements of the Fourteenth Amendment. The only plausible explanation for this conduct is that the legislative leadership, Speaker Black and his allies, were aware that the use of the corrected census data would require that an incumbent Democrat representative from Orange County necessarily be paired with the House of

Representatives Democratic Party Majority Leader, as well as other incumbent pairings, and that the legislative leadership, with the complicity and assistance of the legislative staff, intentionally sought to conceal the existence of the data until the legislative redistricting scheme could be enacted by the Legislature.

Clearly when the legislative redistricting scheme was enacted in November 2003 the legislative leadership, through its legislative redistricting staff, was in possession of "corrected" census data of the type described in the United States Supreme Court decision of *Utah vs. Evans.* Clearly possessing such data and refusing to use it in order to equalize the population cannot constitute an honest and good faith attempt to equalize the population of legislative districts to the extent practicable. *Reynolds vs. Sims*, 377 U.S. 533, 577 (1964)

IV. THE APPLICATION OF THE CORRECTED CENSUS DATA TO THE CURRENT REDISTRICTING SCHEME PROVES A PRIMA FACIE CASE OF VOTE DILUTION AND THE STATE HAS NO CONSISTENTLY APPLIED LEGITIMATE STATE POLICY TO REBUT THE PRESUMPTION.

The district court's refusal to use the corrected enumerated census data in order to assess one-person, one-vote under the fourteenth amendment violates the spirit and policy of 45 years of this court's precedent since *Baker vs. Carr.* The District Court in quoting *Reynolds vs. Sims*, places an

inappropriate 'only' in front of the quote "that a state make an honest and good faith effort to construct districts...as nearly of equal population as is practicable", when the word actually before the that is 'requires.' The 'only' turns a command into a limitation. There is no 'only' anywhere in that paragraph in *Reynolds*. At 577. This of course begs the question as to how using census data which you know to be erroneous can constitute an honest and good-faith effort to construct districts as nearly equal population as is practicable when you have more accurate corrected enumerated census data available. The District Court repeats this error when it states that the "Fourteenth Amendment's equal protection clause has been interpreted **only** to prohibit substantial population deviations among districts. That is, states have more flexibility in formulating redistricting plans for the state legislative seats by requiring **only** substantial population equality as opposed to strict population equality required in congressional redistricting plans." *Dean* at 7.(emphasis added) This of course ignores the fact of this Court has defined any overall range of deviation above 10 percent to be substantial.

In reviewing one person, one vote challenges to state legislative plans, this Court has adopted a so-called "ten percent rule" for allocating the burden of proof. In *Gaffney*, the Supreme Court observed that "minor deviations from mathematical equality among state legislative districts are insufficient to make out a prima facie case of invidious discrimination under the Fourteenth Amendment so as to require justification by the State." *Gaffney v.*

Cummings, 412 U.S. 735, 745 (1973). After a series of cases further distinguishing minor population deviations from larger deviations requiring justification, *see Connor v. Finch,* 431 U.S. 407, 418 (1977); *White v. Regester,* 412 U.S. 755, 764 (1973), the Court eventually stated in more precise terms that, as a general matter, "an apportionment plan with a maximum population deviation under *10%* falls within this category of minor deviations" that are insufficient to make out a prima facie case of discrimination in violation of the Fourteenth Amendment. *Brown v. Thomson,* 462 U.S. 835, 842 (1983). In contrast, a plan with a higher maximum deviation "**creates a prima facie case of discrimination and therefore must be justified by the State.**" *Id.* at 842-43, 103 S.Ct. at 2696 (emphasis added). In considering legitimate justifications, courts must consider "[t]he consistency of application and the neutrality of effect of the nonpopulation criteria" in order to determine whether a state legislative reapportionment plan violates the Fourteenth Amendment. *Id.* at 845-46. Furthermore the burden of proof would be on the Defendants to prove that the redistricting process and the resulting deviations did not have a "taint of arbitrariness or discrimination." *Roman v. Sincock,* 377 U.S. 695, 710 (1964). The general policy of this court's decisions during the past 45 years regarding one person, one-vote has been that a jurisdiction should attempt to equalize its population using the most accurate enumerated census data available. The decision of the District Court in this case reverses that entire policy and replaces it with the idea that the initial report of the decennial census constitutes a safe harbor upon which any jurisdiction

can rely irrespective of the grossest mathematical or processing errors, even when those errors have been revealed and the Census Bureau has corrected them. This is the exact concept that this Court rejected in an analogous context in *Evans*. The same commonsense approach that this court used in *Evans* should also apply in this case and require the district court to assess the overall range of deviation using the corrected enumerated census data.

The ideal district size for House of Representative districts using the corrected data is 67,054. Using the corrected census data, the smallest House district is District 56 in Orange County with a total population of 61,127 and deviation from ideal of -8.84%. Using the corrected census data, the largest House district is District 6 in Beaufort and Pitt Counties with a total population of 70,689 and a deviation from ideal of +5.42%. This yields an overall range of deviation in the House of Representative of 14.36%. This is well in excess of the 10% deviation necessary to prove a prima facie case on the deviations alone. There are 48 other districts in excess of the 10 percent range. There are two more districts, 2 and 87, which are under populated in excess of -5%. Districts which are under represented in excess of the 10% overall range are listed in Appendix C. Over two fifths of the House of Representatives districts are overpopulated in excess of the 10 percent overall range and therefore the voters in these districts are unconstitutionally underrepresented.

The ideal district size for Senate districts using the corrected data is 160,929. Using the

corrected census data, the smallest Senate district is District 56 in Orange County with a total population of 151,154 and deviation from ideal of -6.07%. Using the corrected census data, the largest Senate district is District 17 in Wake County with a total population of 169,010 and a deviation from ideal of +5.02%. All voters in District 17 are under-represented and their voting strength is unconstitutionally diluted. The overall range of deviation is 11.09%. This is well in excess of the 10% deviation necessary to prove a prima facie case on the deviations alone. Other Senate districts which are under represented in excess of the 10% overall range include, 21, 39, 19, 42, 10, 18, 33, 26, 8, 17. Over 1/5 of the districts in the Senate are overpopulated in excess of the 10 percent overall range. The voters in these districts are under-represented and have had their votes unconstitutionally diluted. Two other districts, 3 and 14, are under populated in excess of -5%. See Appendix D.

Application of the principle annunciated in *Utah vs. Evans* to the corrections of the errors in the processing of the Census 2000 data requires that the corrected data produced by the Census Bureau in 2003 be used by this court to assess the compliance of North Carolina's 2003 legislative redistricting scheme with the one person one-vote principle of the equal protection clause of the Fourteenth Amendment. When the corrected census data is applied to the districts contained in North Carolina's 2003 legislative districting scheme overall ranges of deviations are produced which are sufficient to state a prima facie case for the Plaintiffs without any additional evidence. Since a prima facie case has

been stated the Plaintiffs are certain of success on the merits unless the Defendants can produce a consistently applied legitimate state policy for the use of the erroneous census data. It is extremely doubtful the Defendants can produce a consistently applied legitimate state policy for the use of the erroneous census data. In fact the Appellees have never suggested that they have or could ever produce such a policy they have relied instead on their assertion that the law allows them to rely on the erroneous census data irrespective of any subsequent corrections to that data. If the principle of *Evans vs. Utah* is applied in this context then the state North Carolina cannot be said to have made an honest and good faith effort to equalize population and can avail itself to no consistently applied legitimate state policy which is capable of rebutting the prima facie case in favor of Plaintiffs that is made by the overall range of deviation of the House and Senate redistricting schemes. There are no applicable disputable facts as to these issues the only question is one of law.

CONCLUSION

The appellants respectfully ask that this Court reverse and vacate the decision below and remand for a determination of exactly what corrected enumerated census data was available to the state North Carolina at the time it redistricted its General Assembly districts and that the District Court should use the most accurate enumerated census data available to the state North Carolina at that time when assessing the overall range of the legislative redistricting scheme for its compliance

with the one person one-vote principle.

Respectfully submitted,

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Dated: October 21, 2004

No. _____

In The Supreme Court of the United States

JOSEPH DEAN, et al.,

Appellants,

v.

LARRY LEAKE, et al.,

Appellees,

and

NORTH CAROLINA STATE CONFERENCE OF BRANCHES OF THE NAACP,

Appellee-Intervenor.

On Appeal from the United States District Court
for the Eastern District of North Carolina
Northern Division

APPENDIX

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APPENDIX A

Larry **LEAKE**, in his official capacity as Chairman of the North Carolina State Board of Elections, et al., Defendants.
No. 2:07-CV-00051-FL-AD-RC.

March 17, 2008.

Robert Neal Hunter, Jr., Hunter Higgins Miles Elam & Benjamin, PLLC, Greensboro, NC, for Plaintiffs. Alexander McClure, Susan Kelly Nichols, Tiare Bowe Smiley, N.C. Department of Justice, Raleigh, NC, for Defendants.

Before ALLYSON K. DUNCAN, United States Circuit Judge, Fourth Circuit; ROBERT J. CONRAD, JR., Chief United States District Judge for the Western District of North Carolina; and LOUISE W. FLANAGAN, Chief United States District Judge for the Eastern District of North Carolina, sitting by designation as a three-judge District Court.

MEMORANDUM OPINION

ROBERT J. CONRAD, JR., Chief Judge.

This matter comes before the three-judge Court on Plaintiffs' Motion for a Preliminary Injunction.[FN1] Due to the proximity of the candidates filing for the 2008 election, we issued an order without accompanying memorandum following the January 25 hearing, denying equitable relief. We now explain our reasoning.

I.

Plaintiffs are citizens of the United States and voters in North Carolina state legislative districts. They filed a complaint and motion for preliminary injunction on November 21, 2007, to rectify alleged constitutional defects in the current redistricting scheme. Defendants are the Executive Director and current members of the State Board of Elections, the Attorney General of the State of North Carolina, and the North Carolina State Conferences of Branches of the National Association for the Advancement of Colored People.

In their complaint, Plaintiffs assert five claims. First, Plaintiffs allege a violation of the Equal Protection Clause "one-person, one-vote" principle, due to the North Carolina General Assembly's failure to incorporate updated census data into its redistricting calculations prior to its most recent (November, 2003) redistricting plan. Plaintiffs also allege that "[t]he failure of the Legislature to use the corrected data was an intentional decision by [former Speaker] Black and his allies to politically benefit from the use of incorrect data by arranging the election districts to maintain their control of the North Carolina House of Representatives."(Compl., Doc. No. 1, at 23). Second, Plaintiffs allege a violation of the Due Process Clause of the Fourteenth Amendment due to the deprivation of a state created right because the North Carolina Supreme Court in its *Pender County*[FN2] decision held that the current redistricting plan violates the North Carolina State constitution. Nonetheless, the state court deferred action on the state constitutional

violation until *after* the next election cycle, ensuring that Plaintiffs' state created voting rights will not be vindicated through at least one more series of elections. Third, Plaintiffs allege a federal Voting Rights Act ("VRA") violation because the current redistricting plan improperly configures the minority population encompassed in the contiguous counties of Pender, Sampson, and New Hanover, which population could be combined to create a valid Section 2 federal VRA district. Fourth, Plaintiffs allege an Equal Protection Clause violation on the basis of racial gerrymandering. Fifth and finally, Plaintiffs allege that the state's failure properly to implement and administer a lawful election plan constitutes a violation of the federal constitutional guarantee of a Republican Form of Government.

In their memorandum in support of motion for preliminary injunction and at hearing on same motion, Plaintiffs focused exclusively on their first claim, alleging violations of the one-person, one-vote principle.

II. BACKGROUND

North Carolina has an extensive history of problematic redistricting efforts tracing back to the 1730s,[FN3] which has generated significant litigation.[FN4] Since the 2000 census, the North Carolina Supreme Court has found the General Assembly's redistricting plans unconstitutional three times.[FN5]To understand the current statewide redistricting plan, we must review North Carolina's recent redistricting efforts.

On March 21, 2000, the Census Bureau released census data showing that North Carolina had a population of 8,049,313 for the purposes of redistricting. (Compl., Doc. No. 1, at 9). Following the decennial census, the North Carolina Constitution requires the General Assembly to redistrict. *See*N.C. Const. art. II, §§ 3, 5. Each Senator and Representative is to be elected by districts that are subject to certain requirements: that each Senator and Representative represent, as nearly as possible, an equal number of inhabitants; that each district consists of contiguous territory; that no counties should be divided; and that the districts, once established, remain unaltered until the next decennial census. *Id.*

On May 1, 2001, the General Assembly legislative services office released a Legislator's Guide for redistricting. The guide advised that the average number of persons each Senator will represent was 160,986 (8,049,313 / 50), and the average number each Representative will represent was 67,078 (8,049,313 / 120). (Compl., Doc. No. 1, at 9). Under the guide, the General Assembly was advised that no redistricting scheme would contain an overall maximum population deviation [FN6] exceeding ten percent in order to comply with federal law, the North Carolina Equal Protection Clause and the requirement under the North Carolina Constitution that Senators and Representatives, as nearly as may be, represent an equal number of inhabitants. *Id.* at 10, 649 S.E.2d 364.

A. *Stephenson I*

In the 2001 regular session, the General Assembly enacted its legislative redistricting plans. A group of litigants ("the Stephenson plaintiffs") filed an action in Johnston County Superior Court on November 13, 2001. The Stephenson plaintiffs alleged that the 2001 Senate and House redistricting plans violated the North Carolina Constitution. The defendants filed a notice of removal asserting federal question jurisdiction pursuant to 28 U.S.C. § 1441 and "refusal clause" jurisdiction pursuant to 28 U.S.C. § 1443(2). The district court remanded the case to the North Carolina Superior Court because the court found that the case did not raise a substantial federal question and the plaintiffs' complaint only raised issues of state law. *Stephenson v. Bartlett,* 180 F.Supp.2d 779, 786 (E.D.N.C.2001).

On remand, the trial court granted plaintiffs' motion for summary judgment on the ground that the 2001 legislative redistricting plans violated the State Constitution. The defendants appealed and the North Carolina Supreme Court considered the issue of whether the General Assembly, in enacting the 2001 legislative redistricting plans, violated the Whole County Provisions ("WCP") of the North Carolina Constitution. *Stephenson v. Bartlett (Stephenson I),* 355 N.C.354, 562 S.E.2d 377, 383-84 (N.C.2002). The Supreme Court reviewed the federal role in redistricting and the historical role of counties in legislative redistricting and concluded that "[t]here is a long-standing tradition of respecting county lines during the redistricting process in this State."*Id.* at 386.The Supreme Court

concluded that the WCP remain "valid and binding upon the General Assembly during the redistricting and reapportionment process ... except to the extent superseded by federal law."*Id.* at 390.The Supreme Court held that the General Assembly enacted its 2001 legislative redistricting plans in violation of the WCP, and therefore the plans were unconstitutional and void. *Id.* at 392.

The Supreme Court then announced a remedial analysis which set out a strict hierarchy. First, the legislative districts required by the VRA must be formed prior to the creation of non-VRA districts. *Id.* at 396-97.To the maximum extent possible, the VRA districts must comply with the legal requirements of the WCP. "In forming new legislative districts, any deviation from the ideal population for a legislative district shall be at or within plus or minus five percent for purposes of compliance with federal 'one-person, one-vote' requirements."[FN7] *Id.* at 397."In counties having a 2000 census population sufficient to support the formation of one non-VRA legislative district ..., the WCP requires that the physical boundaries of any such non-VRA legislative district not cross or traverse the exterior geographic line of any such county."*Id.* When two or more non-VRA legislative districts may be created within a single county, that county should form a single non-VRA district. "Such non-VRA districts shall be compact and shall not traverse the exterior geographic boundary of any such county."*Id.*

After placing all the single counties on the map, all two county combinations that can be drawn are similarly placed on the map and then three county

combinations and so forth. Counties should be combined so that the county groupings are composed with the minimum number of counties per group, and all counties grouped together must be composed of contiguous territory. *Id.* at 383-84.Only after the counties are appropriately grouped, districts are to be drawn within the county groups that minimize the number of county line traversals and construct compact districts which respect communities of interest inside the county groupings. The court emphasized that "[t]he intent underlying the WCP must be enforced to the maximum extent possible; thus, only the smallest number of counties necessary to comply with the at or within plus or minus five percent 'one-person, one-vote' standard shall be combined."*Id.* at 384.

B. *Stephenson II*

In 2002, the General Assembly tried again and submitted the plans to the Superior Court for its review for compliance with *Stephenson I.* The Superior Court held that the 2002 plans violated the North Carolina Constitution as interpreted in *Stephenson I.* The 2002 elections were held under an interim plan created by the Superior Court and precleared by the Department of Justice.

In 2003, the North Carolina Supreme Court considered whether the Superior Court correctly determined that the General Assembly's 2002 revised redistricting plans were unconstitutional. *Stephenson v. Bartlett (Stephenson II),* 357 N.C.301, 582 S.E.2d 247 (N.C.2003). The Superior Court had concluded that the 2002 revised redistricting plans

failed to be in strict compliance with *Stephenson I* because the plan included "excessive division of counties; deficiencies in county groupings; and substantial failures in compactness, contiguity, and communities of interest."*Id.* at 252.The Supreme Court affirmed the Superior Court's findings that the 2002 plans were unconstitutional. *Id.* at 254.

C. *Pender County*

In November 2003, the General Assembly enacted the 2003 State House Plan.[FN8]The Stephenson plaintiffs filed a motion to enforce their injunctions, but the North Carolina Supreme Court decided that the Stephenson case was not ongoing and therefore the Stephenson plaintiffs would have to file a new complaint. *Stephenson v. Bartlett,* 358 N.C. 219, 595 S.E.2d 112 (N.C.2004). A complaint was filed before the state three-judge panel on May 14, 2004, by the Pender County Commissioners. *Pender County v. Bartlett,* 361 N.C. 491, 649 S.E.2d 364 (N.C.2007). The three-judge panel [FN9] concluded that House District 18 met the three *Gingles*[FN10] threshold preconditions and, based on a totality of the circumstances, the creation of House District 18 as a crossover district was required by Section 2 of the VRA.[FN11]*Id.* at 368.Thus, the panel concluded that Pender County could be split and that the district complied with the legal requirements of the WCP, as set out in *Stephenson I. Id.*

The North Carolina Supreme Court examined whether the current geographic configuration and racial composition of North Carolina House District 18 as established by the 2003 redistricting plan was

required by Section 2 of the VRA. The Supreme Court further considered whether a sufficiently large and geographically compact minority population must constitute a numerical majority of citizens of voting age to trigger Section 2 compliance. The Supreme Court concluded that House District 18's current configuration was not mandated by Section 2. *Id.* at 374.

The court reiterated that the formation of legislative districts must comport with the requirements of the North Carolina Constitution, unless federal law supersedes those provisions. Thus, the court concluded that because House District 18 was not required by Section 2, it must comply with *Stephenson I* and the WCP. *Id* . at 376.Because the 2003 redistricting plan split House District 18 contrary to the requirements of the WCP, the court ordered that it must be redrawn. *Id.* The North Carolina Supreme Court, however, stayed the remedy of redrawing the district until after the 2008 election in order to minimize disruption to the ongoing election cycle.[FN12] *Id.*

On November 21, 2007, members of the North Carolina State Board of Elections who were defendants in the *Pender County* litigation filed a petition seeking *writ of certiorari* from the United States Supreme Court. *Bartlett v. Strickland,* 361 N.C. 491, 649 S.E.2d 364 (N.C.2007), *petition for cert. filed* (U.S. Nov. 21, 2007) (No. 07-689). On March 17, 2008, the Supreme Court granted the petition for *writ of certiorari. See Bartlett v. Strickland,* 361 N.C. 491, 649 S.E.2d 364 (N.C.2007), *cert. granted,*No. 07-689 (U.S. Mar. 17, 2008).

D. Census Data

The 2000 decennial census was completed, and the results were submitted to the States for state-office redistricting purposes, by April 1, 2001, as required by 13 U.S.C. § 141(c). The Census Bureau thereafter reviewed the 2000 census data through its "Census 2000 Count Question Resolution," or "CQR," program. (Defs.' Ex. 4). On February 20, 2003, the Director of Research for the North Carolina General Assembly received a notice from a census official, updating him on the progress of the CQR program in processing challenges from local governments in North Carolina. (Pls.' Ex. 7). The letter promised that the Census Bureau's responses to such local government challenges would be forwarded to the State as the program continued. The additional correspondence would indicate whether a change in census data was forthcoming, and if so, would "inform [the State] of the census blocks affected."*Id.*

On May 14, 2003, the Census Bureau sent a letter to Orange County officials informing them that "[o]ur research found an error in the geographic assignment of group quarters in various blocks within the town of Chapel Hill" and, further, that census officials had "identified housing units that were erroneously included in Census 2000 due to processing errors."(Pls.' Ex. 8, 9). The letter promised that "Orange County will soon receive a Certification Letter from the Director of the Census Bureau stating Orange County's housing unit and associated population counts."(Pls.'s Ex. 8).

On September 30, 2003, census officials mailed "an official statement of the revised Census 2000 population and housing units counts for Orange County," reflecting a downward correction of 2,696 persons in the census totals for the county. (Pls.' Ex. 10). The letter did not further divide or detail the characteristics of those 2,696 persons, and it did not expressly provide corrections on a block-by-block level (called "block-level data"). Similar letters were sent to local and state officials regarding challenges in other counties in the state, with many corrections (all smaller than that in Orange County) certified.

Less than two months later, on November 25, 2003, the legislature approved house and senate redistricting plans in response to *Stephenson I* and *Stephenson II* (the "2003 redisricting plan"). The 2003 redistricting plan employed the *Stephenson* algorithm for drawing districts, using the original 2000 census data that did not reflect the CQR program corrections (the "uncorrected census data"). On June 10, 2004, the CQR program was completed, and the final detailed block-level data were posted to the census website (the "corrected census data"). (*See* Defs. Ex. 3 (providing 2 pages of the 100-page report of North Carolina corrections)); full report *available at* www.census.gov/prod/cen2000/notes/blks-37.xls. The final data do not indicate how the racial makeup of the blocks was affected by the corrections. The CQR corrected data carried a disclaimer that it was not to be used for redistricting purposes: "Census counts used for Congressional apportionment and legislative redistricting and the Census 2000 data products remain unchanged."(Pls.Ex.10).

Plaintiffs allege that the North Carolina General Assembly improperly refused to incorporate corrected census data into its redistricting calculus when it passed the November 2003 redistricting scheme. Plaintiffs claim that the use of the uncorrected census data creates a ripple effect of violations of the one-person, one-vote requirement of *Reynolds v. Sims,* 377 U.S. 533, 577, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964), and necessitates statewide redistricting. Plaintiffs allege that the General Assembly intentionally used the incorrect census data to maintain its current political dominance. They request this Court grant a preliminary injunction to enjoin Defendants from continuing to use the 2003 plans during the 2008 election.

III. DISCUSSION

We undertake this analysis cognizant of the importance of insuring that every voter in North Carolina has an equal voice in electing his or her own representatives. The Supreme Court has acknowledged the preeminence of voting and has stated "[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live."*Wesberry v. Sanders,* 376 U.S. 1, 17, 84 S.Ct. 526, 11 L.Ed.2d 481 (1964).

The parties agree that the issue before this Court is whether Plaintiffs are entitled to a preliminary injunction enjoining Defendants from conducting elections in 2008 utilizing the 2003 legislative districts. "[P]reliminary injunctions are extraordinary remedies involving the exercise of very

far-reaching power to be granted only sparingly and in limited circumstances."*Microstrategy Inc. v. Motorola, Inc.*, 245 F.3d 335, 339 (4th Cir.2001) (internal quotation marks omitted). In order to grant injunctive relief, Plaintiffs have to show: "(1) the likelihood of irreparable harm to the plaintiff if the preliminary injunction is denied, (2) the likelihood of harm to the defendant if the requested relief is granted, (3) the likelihood that the plaintiff will succeed on the merits, and (4) the public interest."*Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 812 (4th Cir.1991)."[T]he balance of harm evaluation should precede the determination of the degree by which the plaintiff must establish the likelihood of success on his part."*Id.* at 813.If, after balancing the irreparable harm to the plaintiff against the irreparable harm to the defendant, the balance tips "decidedly" in the favor of the plaintiff, a preliminary injunction would be appropriate if the plaintiff "raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them fair ground for litigation and thus for more deliberate investigation."*Id.* at 812-13 (internal quotation marks omitted). If the balance tips away from the plaintiff toward equivalency, the plaintiff must demonstrate its entitlement to a preliminary injunction with "a very clear and strong case," because "if there is doubt as to the probability of plaintiff's ultimate success on the merits, the preliminary injunction must be denied."*Id.* at 813."[T]he decision to grant a preliminary injunction is discretionary with the district court and may not be set aside on appeal unless an abuse of discretion is shown."*Rum Creek Coal Sales, Inc. v. Caperton*, 926 F.2d 353, 358 (4th

Cir.1991) (internal quotation marks omitted).

A. Plaintiffs' Irreparable Injury/Likelihood of Success

Deprivation of a constitutional right, even for a short period of time, constitutes irreparable harm. *Elrod v. Bums,* 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976). Although the balance of harms inquiry ordinarily precedes an analysis of a plaintiff's likelihood of success on the merits, when the harm alleged by the plaintiff is the deprivation of a constitutional right, the likelihood of success on the merits is so "inseparably linked" to the proving of an actual harm that the court may proceed directly to consider the merits of the plaintiff's action. *Giovani Carandola, Ltd. v. Bason,* 303 F.3d 507, 511 (4th Cir.2002) (internal quotation marks omitted). Here, where Plaintiffs allege solely constitutional harms, determination of irreparable harm requires determining Plaintiffs' likelihood of success on the merits, and we turn to this question first.

i. One-person, One-vote Violation

With regard to Plaintiffs' likelihood of success on the merits on their one-person, one-vote violation, the principal question here is whether the General Assembly had a duty to use the corrected census data. Without this showing, the state redistricting plan as currently devised falls within the permissible limits of a minor deviation, notwithstanding the State Constitutional violations found by the North Carolina Supreme Court in *Pender County.*Since the duty of redistricting falls

primarily within the purview of the state legislature,[FN13] this Court is hesitant to intervene without a clear showing of likelihood of success on the merits.

The Fourteenth Amendment assures that "representative government in this country is one of equal representation for equal numbers of people."*Reynolds,* 377 U.S. at 560-61. The Equal Protection Clause requires only "that a State make an honest and good faith effort to construct districts ... as nearly of equal population as is practicable."*Id.* at 577.In the state legislative redistricting context, the Fourteenth Amendment's Equal Protection Clause has been interpreted only to prohibit substantial population deviations among districts. That is, States have more flexibility in formulating redistricting plans for the state legislative seats by requiring only substantial population equality as opposed to strict population equality required in congressional redistricting plans. *See Gaffney v. Cummings,* 412 U.S. 735, 748-49, 93 S.Ct. 2321, 37 L.Ed.2d 298 (1973). The Supreme Court has recognized that "some deviations from population equality may be necessary to permit the States to pursue other legitimate objectives" and that, generally, a "maximum population deviation under 10% falls within th[e] category of minor deviations."*Brown v. Thomson,* 462 U.S. 835, 842, 103 S.Ct. 2690, 77 L.Ed.2d 214 (1983).[FN14] On the contrary, a plan with a maximum population deviation of 10% or higher "creates a prima facie case of discrimination and therefore must be justified by the State."*Id.* at 842-43.

Plaintiffs assert that the failure to use the corrected census data resulted in a deviation greater than 10% for certain counties which proves their prima facie case.[FN15](*See* Pls.' Ex. 2). Plaintiffs rely on *Utah v. Evans,* 536 U.S. 452, 122 S.Ct. 2191, 153 L.Ed.2d 453 (2002), *Kirkpatrick v. Preisler,* 394 U.S. 526, 89 S.Ct. 1225, 22 L.Ed.2d 519 (1969), and *Karcher v. Daggett,* 462 U.S. 725, 103 S.Ct. 2653, 77 L.Ed.2d 133 (1983), to support their assertion that Defendants had a duty to use the corrected census data. We find that those cases do not support the imposition of a duty to use the corrected census data. Instead, we conclude that the General Assembly is permitted, but not required, to use the corrected census data.

In *Utah v. Evans,* the State of Utah sued the Secretary of Commerce, challenging the use of a particular census interpolation method known as "hot deck imputation." The method resulted in Utah being awarded one fewer seat in the House of Representatives than it would have been awarded had no interpolation method been used. North Carolina, the beneficiary of an additional seat via the method, intervened and challenged Utah's standing on redressability grounds. In particular, North Carolina argued that the reticulated statutory scheme for the taking of a decennial census, the certification of results, and, finally, the awarding of Representatives left no room for post-hoc, inter-decennial challenges that would require re-certifying results and re-allocating Representatives. *See Utah v. Evans,* 536 U.S. at 461. The Court disagreed, noting that the statutes did not cover the proper procedure to be implemented should the original

certification "turn out to contain, or to reflect, a serious mistake."*Id.* at 462.Instead, the statutory language "is open to a more flexible reading that would *permit* correction of a certificate found to rest upon a serious error-say, a clerical, a mathematical, or a calculation error, in census data."*Id.* (emphasis added). If the error were discovered in a timely fashion, re-allocating Representatives "makes good sense." *Id.* Plaintiffs contend that if Congress would have to reapportion based upon a mathematical error, then a state would be obliged to rely on the corrected census data during redistricting.

In *Kirkpatrick v. Preisler,* the Court recognized that "[s]ituations may arise where substantial population shifts [between censuses] can be anticipated."394 U.S. at 535. The Court held that "States that are redistricting *may* properly consider" such shifts, but only if "these shifts can be predicted with a high degree of accuracy" and are "thoroughly documented and applied throughout the State in a systematic, not an *ad hoc,* manner."*Id.* (emphasis added). Plaintiffs assert that the corrected census data regarding the mathematical error in Orange County was well-documented and certified by the Census Bureau. Thus, Plaintiffs conclude, the General Assembly was required to use the corrected data during redistricting.

In *Karcher v. Daggett,* the Supreme Court discussed the census data relevant to the apportionment plan for New Jersey. The Court stated that the Census Bureau had released the preliminary figures and subsequently released two corrections. The Court concluded that"[b]ecause this last correction was not

available to the legislature at the time it enacted the plan at issue, we need not consider it." *Karcher,* 462 U.S. at 728 n. 1. Since the General Assembly had access to the corrected data before redistricting in 2003, Plaintiffs assert that like the *Karcher* Court, this Court should use the corrected figures in measuring the one-person, one-vote violation.

This Court concludes that these cases use permissive, not mandatory, language when referring to the use of corrected census data. This Court recognizes the fact that states conducting redistricting years after the decennial census are operating under a legal fiction. *See Georgia v. Ashcroft,* 539 U.S. 461, 488 n. 2, 123 S.Ct. 2498, 156 L.Ed.2d 428 (2003) ("[B]efore the new census, States operate under the legal fiction that even 10 years later, the plans are constitutionally apportioned."). Those circumstances, as well as the inherently legislative nature of the redistricting function, support the granting of deference to the judgment of the General Assembly in deciding which data to use. *Wise v. Lipscomb,* 437 U.S. 535, 539, 98 S.Ct. 2493, 57 L.Ed.2d 411 (1978) ("The [Supreme] Court has repeatedly held that redistricting and reapportioning legislative bodies is a legislative task which the federal courts should make every effort not to pre-empt."). In the absence of a duty to use the corrected census data, Plaintiffs cannot show a violation of the one-person, one-vote requirement. Thus, we conclude that Plaintiffs cannot claim they are irreparably harmed and have not shown a likelihood of success on the merits.

ii. Good faith

Plaintiffs' secondary argument is that Defendants had a good faith duty to use the most accurate data available at the time of redistricting when constructing the Senate and House legislative districts. *See Reynolds,* 377 U.S. at 577 ("[T]he Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable."). Plaintiffs contend that because the Census Bureau had notified the General Assembly of the mathematical error prior to the enactment of the 2003 districts, the *Reynolds* duty of good faith required the General Assembly to use the most accurate data available at the time of redistricting. While this argument has superficial appeal, it ignores that fact that redistricting is primarily a legislative function. In the absence of an absolute duty to use corrected census data, this Court believes that the General Assembly could properly choose to use the uncorrected census data.

Plaintiffs additionally argued that even if the court finds no duty to use the corrected census data, they can still prevail on the merits by showing that Defendants acted in bad faith in constructing the 2003 redistricting plan. Plaintiffs have made some vague allegations of a conspiracy surrounding former Speaker James Black and his supporters and assert that the incumbents who positively benefitted from the use of the uncorrected census data would have included allies of former Speaker Black. (*See* Compl., Doc. No. 1, at 23). In order to succeed, Plaintiffs must provide a link between the conspiracy and the

use of the uncorrected data. Plaintiffs must provide evidence that the redistricting process had a "taint of arbitrariness or discrimination." *Daly v. Hunt,* 93 F.3d 1212, 1220 (4th Cir.1996) (noting that a maximum deviation of below 10% "does not completely insulate a state's districting plan from attack" but holding that "[t]o survive summary judgment, the plaintiff would have to produce further evidence to show that the apportionment process had a taint of arbitrariness or discrimination" (internal quotation marks omitted)). At this stage in the proceedings, Plaintiffs cannot prevail on the bad faith claim for lack of evidence. Plaintiffs have offered little more than conclusory allegations of a conspiracy to show invidious intent. Since Plaintiffs have not shown that the General Assembly had a duty to use the corrected data or that it otherwise proceeded in bad faith, we find Plaintiffs have provided insufficient proof to show a likelihood of success on the merits.

B. Defendants' Harm

Defendants argue that they will be significantly harmed if this Court were to enjoin them from conducting the 2008 election using the 2003 legislative districts. "Because state officials are the parties against whom the injunction is sought, and they represent the public interest, consideration of the harm to them should the injunction issue merges with consideration of the public interest."*Jackson v. Leake*, 476 F.Supp.2d 515, 530 (E.D.N.C.2006). The filing of candidates commenced on February 11, 2008, and the primary is scheduled to be held on May 6, 2008. Invalidating any of the districts would

likely disrupt the electoral process. Some of the prospective candidates and voters have begun to prepare for the 2008 elections in reliance on the existing state district plan. Any delay could affect "the ability of North Carolinians to participate meaningfully in the presidential primaries," and granting a preliminary injunction will otherwise "disrupt an orderly election process." (Defs.' Mem. Opp., Doc. No. 41, at 13). We find that Defendants and the public interest in holding an orderly election would be substantially harmed if preliminary injunctive relief were granted.

IV. Conclusion

In balancing the foregoing factors, this Court concludes that a preliminary injunction is not warranted. We find that the balancing of the harms tips decidedly in favor of Defendants since Plaintiffs have failed to show any irreparable harm. Absent any evidence of invidious intent on the part of the General Assembly, there is an insufficient amount of proof to grant the extraordinary remedy of a preliminary injunction.

Accordingly, Plaintiffs' motion for preliminary injunction is **DENIED.**

FN1."A district court of three judges shall be convened ... when an action is filed challenging the constitutionality of ... the apportionment of any statewide legislative body."28 U.S.C.A. § 2284 (West 2006).

FN2.*Pender County v. Bartlett,* 361 N.C. 491, 649

S.E.2d 364 (N.C.2007).

FN3. Justice Scalia noted this history of political gerrymandering in North Carolina dating back to the 1730s in his plurality opinion in *Vieth v. Jubelirer,* 541 U.S. 267, 124 S.Ct. 1769, 158 L.Ed.2d 546 (2004)."In 1732, two members of His Majesty's Council and the attorney general and deputy inspector and comptroller general of affairs of the Province of North Carolina reported that the Governor had proceeded to 'divide old Precincts established by Law, & to enact new Ones in Places, whereby his Arts he has endeavored to prepossess People in a future election according to his desire, his Designs herein being ... either to endeavor by his means to get a Majority of his creatures in the Lower House' or to disrupt the assembly's proceedings."*Id.* at 274 (quoting 3 Colonial Records of North Carolina 380-81 (W. Saunders ed. 1886)).

FN4.*See, e.g., Easley v. Cromartie,* 532 U.S. 234, 121 S.Ct. 1452, 149 L.Ed.2d 430 (2001); *Hunt v. Cromartie,* 526 U.S. 541, 119 S.Ct. 1545, 143 L.Ed.2d 731 (1999); *Shaw v. Hunt,* 517 U.S. 899, 116 S.Ct. 1894, 135 L.Ed.2d 207 (1996); *Shaw v. Reno,* 509 U.S. 630, 113 S.Ct. 2816, 125 L.Ed.2d 511 (1993); *Thornburg v. Gingles,* 478 U.S. 30, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986); *Daly v. Hunt,* 93 F.3d 1212 (4th Cir.1996); *Pope v. Blue,* 809 F.Supp. 392 (W.D.N.C.1992), *aff'd,*506 U.S. 801, 113 S.Ct. 30, 121 L.Ed.2d 3 (1992).

FN5.*See Stephenson v. Bartlett (Stephenson I),* 355 N.C.354, 562 S.E.2d 377, 384 (N.C.2002); *Stephenson v. Bartlett (Stephenson II),* 357 N.C.301, 582 S.E.2d

247, 254 (N.C.2003); *Pender County,* 649 S.E.2d at 374-76.

FN6. Overall maximum population deviation is a term of art used in the redistricting context. The Fourth Circuit has stated that "to calculate maximum deviation, the court first constructs a hypothetical ideal district by dividing the total population of the political unit (e.g., state or county) by the total number of representatives who serve that population. Then, the court determines how much the actual population of each district varies from the population of the ideal district. This deviation is expressed as a percentage of the ideal population. Maximum deviation is the sum of the absolute value of the deviation of the district with the smallest population and that of the district with the largest population."*Daly,* 93 F.3d at 1216 n. 2.

FN7. This standard enunciated by the North Carolina Supreme Court is more restrictive than that imposed by the United States Supreme Court in *Brown v. Thomson,* 462 U.S. 835, 103 S.Ct. 2690, 77 L.Ed.2d 214 (1983), and interpreted by the Fourth Circuit in *Daly v. Hunt,* 93 F.3d 1212, 1216 n. 2 (4th Cir.1996). Under a state plan in which the least-populated district deviates 5.9% below the ideal, and the most-populated district deviates 3.9% above the ideal, the *Brown / Daly* calculation yields a maximum population deviation of 9.8%, within the 10% safe harbor absent invidious intent. Under *Stephenson I,* however, the same plan would violate the one-person, one-vote requirement by virtue of the least-populated district deviating more than 5% from the ideal, without reference to the percentage deviation

of the most-populated district.

FN8. The 2003 State House Plan is the redistricting plan challenged by Plaintiffs in this case.

FN9."Any action challenging the validity of any act of the General Assembly that apportions or redistricts State legislative ... districts shall be filed in the Superior Court of Wake County and shall be heard and determined by a three-judge panel of the Superior Court of Wake County."N.C. Gen.Stat. § 1-267.1 (2007).

FN10.*Thornburg v. Gingles,* 478 U.S. at 50-51.

FN11. Section 2(a) of the VRA applies to all states and prohibits all redistricting plans from denying the rights of any citizen "to vote on account of race or color [or membership in a language minority group]."42 U.S.C. § 1973(a) (2000). Subsection (b) further states that a citizen's right to vote is denied or abridged if members of a minority group "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice."42 U.S.C. § 1973(b).

FN12. At oral argument, Plaintiffs indicated that the General Assembly would be required to redistrict when it reconvened in May 2008, following the North Carolina Supreme Court's order. This Court disagrees with Plaintiffs' assertion and concludes that the Supreme Court stayed its redistricting order until after the 2008 elections. Thus, the General Assembly is not required to redistrict until after

November 2008.

FN13.*See Reynolds v. Sims,* 377 U.S. at 586 ("[L]egislative reapportionment is primarily a matter for legislative consideration and determination.").

FN14. The Fourth Circuit has discerned from its review of subsequent Supreme Court cases an algorithm for calculating the maximum population deviation for purposes of compliance with *Brown.See Daly,* 93 F.3d at 1216 n. 2. The court should "first construct[ ] a hypothetical ideal district by dividing the total population of the political unit ... by the total number of representatives who serve that population."*Id.* Using the empirical data of the challenged districts, the court then calculates the percentage by which the actual population differs from the "ideal" population per district. These percentages can be positive, as would be the case for an "under-represented" district, or negative, as would be the case for an "over-represented" district. Lastly, the court compares the district with the largest negative percentage with the district with the largest positive percentage, and adds the ("absolute value," or positive value, of the) two percentages. That sum represents the maximum population deviation that, if over 10%, signals that Plaintiffs in the litigation have proved a prima facie violation of the one-person, one-vote principle. *Id.*

FN15. In the house districts, for example, using the corrected census data shows that the least-populated district is District 56 in Orange County, with a deviation of 8.84% below the ideal, while the most-populated district is District 6 in Pitt and Beaufort

Counties, with a deviation of 5.42% above the ideal, for a "maximum population deviation" of 14.26%. *See* Affidavit of John B. Morgan ¶ 12. In the senate districts, the least-populated district is District 23 in Orange and Person Counties, with a deviation of 6.07% below the ideal, while the most-populated district is District 17 in Wake County, with a deviation of 5.02% above the ideal, for a "maximum population deviation" of 11.09%. *See id.* ¶ 13.

APPENDIX B

JOSEPH DEAN, et al., *Plaintiffs,* *v.* **LARRY LEAKE,** in his official capacity as Chairman of the North Carolina State Board of Elections, et al., *Defendants,* *and* **NORTH CAROLINA STATE CONFERENCE OF BRANCHES OF THE NAACP,** *Defendant-Intervenor*	**Civil Action No. 2:07-CV-00051-FL**

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is given that Joseph Dean, Alfred Freimark, Homer Marshall, Jack Steer, Mikele Haywood, Kimberley Hendrix, Dena Barnes, Dwight Story, Robert Rucho, William (Frank) Mitchell, Mike Clampitt, Eric Weaver and Leon Bonner, *Plaintiffs*, appeal to the Supreme Court of the United States from the second order and memorandum opinion denying the Plaintiffs' Motion for Preliminary Injunction entered in this action on March 17, 2008.

This appeal is taken pursuant to Title 28, United States Code, Section 1253.

Dated: March 20, 2008.

/s/Robert N. Hunter, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of March, 2008, I electronically filed the foregoing Plaintiffs' Motion to Extend Time to File Rule 26(f) Joint Report on the Clerk of court using the CM/ECF system which will send notification of such filing to the following:

Alexander McC. Peters, Susan K. Nichols and Tiare B. Smiley, Counsel for Defendants

Anita S. Earls, Southern Coalition for Social Justice and Angela Ciccolo, Interim General Counsel NAACP, Attorneys for Defendant-Intervenor

/s/ Robert N. Hunter, Jr.
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APPENDIX C

Exhibit 1
Table of house districts, in district order.
Deviations are above or below the ideal
district size for NC House of Representatives

HSE DIST.	CORRECTED POPULATION	DEV-IATION	% DEV-IATION
1	64,121	-2933	-4.37%
2	63,666	-3388	-5.05%
3	64,140	-2914	-4.35%
4	63,948	-3106	-4.63%
5	64,618	-2436	-3.63%
6	70,689	3635	5.42%
7	63,744	-3310	-4.94%
8	66,818	-236	-0.35%
9	66,716	-338	-0.50%
10	69,128	2074	3.09%
11	70,357	3303	4.93%
12	63,708	-3346	-4.99%
13	69,764	2710	4.04%

14	67,606	552	0.82%
15	67,864	810	1.21%
16	68,294	1240	1.85%
17	64,135	-2919	-4.35%
18	63,772	-3282	-4.89%
19	69,343	2289	3.41%
20	63,755	-3299	-4.92%
21	70,417	3363	5.02%
22	70,244	3190	4.76%
23	64,907	-2147	-3.20%
24	64,510	-2544	-3.79%
25	63,755	-3299	-4.92%
26	70,352	3298	4.92%
27	66,874	-180	-0.27%
28	70,355	3301	4.92%
29	64,967	-2087	-3.11%
30	64,523	-2531	-3.77%
31	64,023	-3031	-4.52%
32	66,636	-418	-0.62%

33	70,321	3267	4.87%
34	69,711	2657	3.96%
35	70,471	3417	5.10%
36	70,367	3313	4.94%
37	70,398	3344	4.99%
38	70,243	3189	4.76%
39	69,628	2574	3.84%
40	69,841	2787	4.16%
41	66,886	-168	-0.25%
42	63,745	-3309	-4.93%
43	63,986	-3068	-4.58%
44	66,909	-145	-0.22%
45	70,357	3303	4.93%
46	63,740	-3314	-4.94%
47	65,310	-1744	-2.60%
48	63,839	-3215	-4.79%
49	64,516	-2538	-3.79%
50	64,508	-2546	-3.80%
51	70,308	3254	4.85%

52	70,231	3177	4.74%
53	69,925	2871	4.28%
54	67,257	203	0.30%
55	65,424	-1630	-2.43%
56	61,127	-5927	-8.84%
57	70,423	3369	5.02%
58	70,419	3365	5.02%
59	69,971	2917	4.35%
60	69,418	2364	3.53%
61	70,408	3354	5.00%
62	70,409	3355	5.00%
63	65,174	-1880	-2.80%
64	65,626	-1428	-2.13%
65	66,769	-285	-0.43%
66	70,430	3376	5.03%
67	69,519	2465	3.68%
68	70,423	3369	5.02%
69	70,161	3107	4.63%
70	65,833	-1221	-1.82%

71	63,731	-3323	-4.96%
72	63,731	-3323	-4.96%
73	63,813	-3241	-4.83%
74	63,762	-3292	-4.91%
75	63,902	-3152	-4.70%
76	66,034	-1020	-1.52%
77	64,306	-2748	-4.10%
78	64,638	-2416	-3.60%
79	63,782	-3272	-4.88%
80	70,245	3191	4.76%
81	64,129	-2925	-4.36%
82	65,483	-1571	-2.34%
83	65,580	-1474	-2.20%
84	63,733	-3321	-4.95%
85	67,428	374	0.56%
86	63,868	-3186	-4.75%
87	63,705	-3349	-4.99%
88	64,534	-2520	-3.76%
89	63,759	-3295	-4.91%

90	63,751	-3303	-4.93%
91	69,870	2816	4.20%
92	63,848	-3206	-4.78%
93	67,077	23	0.03%
94	65,632	-1422	-2.12%
95	66,249	-805	-1.20%
96	65,105	-1949	-2.91%
97	63,780	-3274	-4.88%
98	70,355	3301	4.92%
99	69,971	2917	4.35%
100	70,380	3326	4.96%
101	66,901	-153	-0.23%
102	69,833	2779	4.14%
103	70,309	3255	4.85%
104	70,400	3346	4.99%
105	70,308	3254	4.85%
106	69,114	2060	3.07%
107	67,799	745	1.11%
108	70,352	3298	4.92%

109	70,418	3364	5.02%
110	70,421	3367	5.02%
111	67,909	855	1.28%
112	70,392	3338	4.98%
113	66,537	-517	-0.77%
114	66,764	-290	-0.43%
115	70,295	3241	4.83%
116	69,271	2217	3.31%
117	70,294	3240	4.83%
118	63,734	-3320	-4.95%
119	63,728	-3326	-4.96%
120	63,745	-3309	-4.93%

Exhibit 2
Table of House District Deviations, ordered from most underpopulated to most overpopulated

HSE DIST.	CORRECTED POPULATION	DEV-IATION	% DEV-IATION
56	61,127	-5927	-8.84%
2	63,666	-3388	-5.05%
87	63,705	-3349	-4.99%
12	63,708	-3346	-4.99%
119	63,728	-3326	-4.96%
71	63,731	-3323	-4.96%
72	63,731	-3323	-4.96%
84	63,733	-3321	-4.95%
118	63,734	-3320	-4.95%
46	63,740	-3314	-4.94%
7	63,744	-3310	-4.94%
42	63,745	-3309	-4.93%
120	63,745	-3309	-4.93%

90	63,751	-3303	-4.93%
20	63,755	-3299	-4.92%
25	63,755	-3299	-4.92%
89	63,759	-3295	-4.91%
74	63,762	-3292	-4.91%
18	63,772	-3282	-4.89%
97	63,780	-3274	-4.88%
79	63,782	-3272	-4.88%
73	63,813	-3241	-4.83%
48	63,839	-3215	-4.79%
92	63,848	-3206	-4.78%
86	63,868	-3186	-4.75%
75	63,902	-3152	-4.70%
4	63,948	-3106	-4.63%
43	63,986	-3068	-4.58%
31	64,023	-3031	-4.52%
1	64,121	-2933	-4.37%
81	64,129	-2925	-4.36%

17	64,135	-2919	-4.35%
3	64,140	-2914	-4.35%
77	64,306	-2748	-4.10%
50	64,508	-2546	-3.80%
24	64,510	-2544	-3.79%
49	64,516	-2538	-3.79%
30	64,523	-2531	-3.77%
88	64,534	-2520	-3.76%
5	64,618	-2436	-3.63%
78	64,638	-2416	-3.60%
23	64,907	-2147	-3.20%
29	64,967	-2087	-3.11%
96	65,105	-1949	-2.91%
63	65,174	-1880	-2.80%
47	65,310	-1744	-2.60%
55	65,424	-1630	-2.43%
82	65,483	-1571	-2.34%

83	65,580	-1474	-2.20%
64	65,626	-1428	-2.13%
94	65,632	-1422	-2.12%
70	65,833	-1221	-1.82%
76	66,034	-1020	-1.52%
95	66,249	-805	-1.20%
113	66,537	-517	-0.77%
32	66,636	-418	-0.62%
9	66,716	-338	-0.50%
114	66,764	-290	-0.43%
65	66,769	-285	-0.43%
8	66,818	-236	-0.35%
27	66,874	-180	-0.27%
41	66,886	-168	-0.25%
101	66,901	-153	-0.23%
44	66,909	-145	-0.22%
93	67,077	23	0.03%
54	67,257	203	0.30%

85	67,428	374	0.56%
14	67,606	552	0.82%
107	67,799	745	1.11%
15	67,864	810	1.21%
111	67,909	855	1.28%
16	68,294	1240	1.85%
106	69,114	2060	3.07%
10	69,128	2074	3.09%
116	69,271	2217	3.31%
19	69,343	2289	3.41%
60	69,418	2364	3.53%
67	69,519	2465	3.68%
39	69,628	2574	3.84%
34	69,711	2657	3.96%
13	69,764	2710	4.04%
102	69,833	2779	4.14%
40	69,841	2787	4.16%

91	69,870	2816	4.20%
53	69,925	2871	4.28%
59	69,971	2917	4.35%
99	69,971	2917	4.35%
69	70,161	3107	4.63%
52	70,231	3177	4.74%
38	70,243	3189	4.76%
22	70,244	3190	4.76%
80	70,245	3191	4.76%
117	70,294	3240	4.83%
115	70,295	3241	4.83%
51	70,308	3254	4.85%
105	70,308	3254	4.85%
103	70,309	3255	4.85%
33	70,321	3267	4.87%
26	70,352	3298	4.92%
108	70,352	3298	4.92%
28	70,355	3301	4.92%

98	70,355	3301	4.92%
11	70,357	3303	4.93%
45	70,357	3303	4.93%
36	70,367	3313	4.94%
100	70,380	3326	4.96%
112	70,392	3338	4.98%
37	70,398	3344	4.99%
104	70,400	3346	4.99%
61	70,408	3354	5.00%
62	70,409	3355	5.00%
21	70,417	3363	5.02%
109	70,418	3364	5.02%
58	70,419	3365	5.02%
110	70,421	3367	5.02%
57	70,423	3369	5.02%
68	70,423	3369	5.02%
66	70,430	3376	5.03%

35	70,471	3417	5.10%
6	70,689	3635	5.42%

APPENDIX D

Exhibit 3
Table of Senate District deviations, in district order. Deviations are above or below the ideal district size for NC Senate

SEN DIST.	CORRECTED POPULATION	DEV-IATION	% DEV-IATION
1	158,595	-2335	-1.451%
2	163,840	2910	1.808%
3	152,336	-8594	-5.340%
4	158,224	-2706	-1.681%
5	160,226	-704	-0.437%
6	160,736	-194	-0.121%
7	158,684	-2246	-1.396%
8	168,972	8042	4.997%
9	160,327	-603	-0.375%
10	168,860	7930	4.928%
11	161,196	266	0.165%
12	156,512	-4418	-2.745%

13	156,891	-4039	-2.510%
14	152,862	-8068	-5.013%
15	152,971	-7959	-4.946%
16	153,023	-7907	-4.913%
17	169,010	8080	5.021%
18	168,856	7926	4.925%
19	167,660	6730	4.182%
20	152,995	-7935	-4.931%
21	167,581	6651	4.133%
22	165,787	4857	3.018%
23	151,154	-9776	-6.075%
24	154,301	-6629	-4.119%
25	165,937	5007	3.111%
26	168,953	8023	4.985%
27	164,775	3845	2.389%
28	157,613	-3317	-2.061%
29	157,293	-3637	-2.260%

30	162,955	2025	1.258%
31	153,025	-7905	-4.912%
32	153,042	-7888	-4.902%
33	168,881	7951	4.941%
34	165,175	4245	2.638%
35	159,811	-1119	-0.695%
36	153,551	-7379	-4.585%
37	162,318	1388	0.862%
38	163,463	2533	1.574%
39	167,629	6699	4.163%
40	165,921	4991	3.101%
41	165,273	4343	2.699%
42	168,522	7592	4.718%
43	162,147	1217	0.756%
44	166,531	5601	3.480%
45	166,312	5382	3.344%
46	159,188	-1742	-1.082%
47	159,046	-1884	-1.171%

48	160,760	-170	-0.106%
49	153,067	-7863	-4.886%
50	153,698	-7232	-4.494%

Exhibit 4
Table of Senate District deviations, ordered from most underpopulated to most overpopulated

SEN DIST.	CORRECTED POPULATION	DEV-IATION	% DEV-IATION
23	151,154	-9776	-6.075%
3	152,336	-8594	-5.340%
14	152,862	-8068	-5.013%
15	152,971	-7959	-4.946%
20	152,995	-7935	-4.931%
16	153,023	-7907	-4.913%
31	153,025	-7905	-4.912%
32	153,042	-7888	-4.902%
49	153,067	-7863	-4.886%

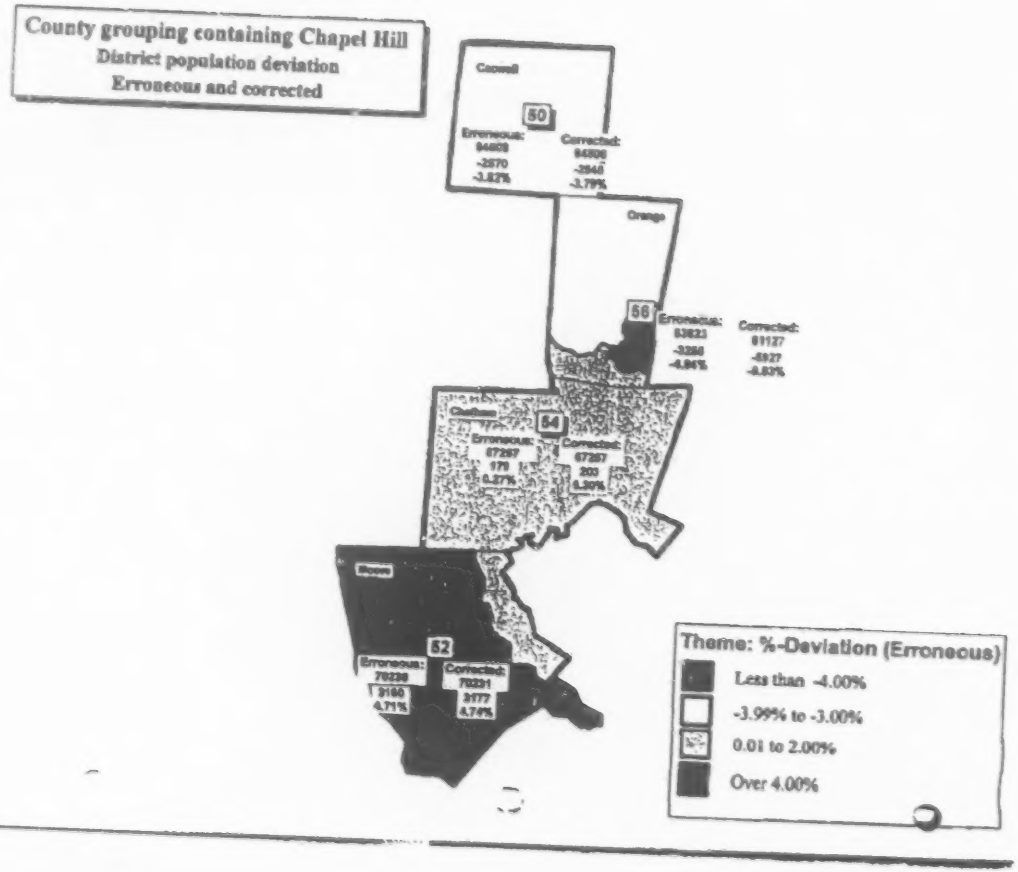
36	153,551	-7379	-4.585%
50	153,698	-7232	-4.494%
24	154,301	-6629	-4.119%
12	156,512	-4418	-2.745%
13	156,891	-4039	-2.510%
29	157,293	-3637	-2.260%
28	157,613	-3317	-2.061%
4	158,224	-2706	-1.681%
1	158,595	-2335	-1.451%
7	158,684	-2246	-1.396%
47	159,046	-1884	-1.171%
46	159,188	-1742	-1.082%
35	159,811	-1119	-0.695%
5	160,226	-704	-0.437%
9	160,327	-603	-0.375%
6	160,736	-194	-0.121%
48	160,760	-170	-0.106%

11	161,196	266	0.165%
43	162,147	1217	0.756%
37	162,318	1388	0.862%
30	162,955	2025	1.258%
38	163,463	2533	1.574%
2	163,840	2910	1.808%
27	164,775	3845	2.389%
34	165,175	4245	2.638%
41	165,273	4343	2.699%
22	165,787	4857	3.018%
40	165,921	4991	3.101%
25	165,937	5007	3.111%
45	166,312	5382	3.344%
44	166,531	5601	3.480%
21	167,581	6651	4.133%
39	167,629	6699	4.163%
19	167,660	6730	4.182%
42	168,522	7592	4.718%

18	168,856	7926	4.925%
10	168,860	7930	4.928%
33	168,881	7951	4.941%
26	168,953	8023	4.985%
8	168,972	8042	4.997%
17	169,010	8080	5.021%

APPENDIX E

Population of Chapel Hill in Orange County
29
68
Chapel Hill
50
54


County grouping containing Chapel Hill
District population deviation
Erroneous and corrected
Caswell
50
Erroneous:
94809
-2570
-1.83%
Corrected:
94936
-2443
-1.79%
Orange
56
Erroneous:
83823
-3356
-4.84%
Corrected:
81127
-6927
-8.83%
Chatham
54
Erroneous:
67257
170
0.27%
Corrected:
67257
203
0.30%
Rowan
52
Erroneous:
70239
3188
4.71%
Corrected:
70231
3177
4.74%
Theme: %-Deviation (Erroneous)
Less than -4.00%
-3.99% to -3.00%
0.01 to 2.00%
Over 4.00%

APPENDIX F

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA NORTHERN DIVISION

JOSEPH DEAN, ALFRED FREIMARK, HOMER MARSHALL JACK STEER, MIKELE HAYWOOD; KIMBERLEY HENDRIX, DEANA BARNES, DWIGHT STORY, ROBERT RUCHO, WILLIAM (FRANK) MITCHELL, MIKE CLAMPITT and **LEON BONNER**

Plaintiffs,

v.

GARY BARTLETT, in his official capacity as Executive Director of the State Board of Elections, **LARRY LEAKE**, in his official capacity as Chairman of the North Carolina State Board of Elections; **GENEVIEVE C. SIMS**, in her official capacity as a Member of the State Board of Elections; **ROBERT B. CORDLE**, in his official capacity as a Member of the State Board of Elections; **LORRAINE G. SHINN**, in her official capacity as a Member of the State Board of Elections; and **CHARLES WINFREE**, in his official capacity as a Member of the State Board of Elections, and **ROY COOPER**, in his official capacity as the North Carolina Attorney General,

Defendants

Civil Action No.

DECLARATION OF JOEL RAUPE

I, Joel Craig Raupe, under penalty of perjury, do hereby make the following declaration:

1. My name is Joel Raupe. I am over eighteen years of age and am fully competent to make this Declaration. Except as stated on information and belief, I have personal knowledge of all matters stated in this Declaration.

2. Between January 1999 and April 2004, I was employed by the North Carolina General Assembly as administrative assistant to Senator Patrick Ballantine, Minority leader of the North Carolina Senate. My duties included monitoring and advising the Minority Leader and Members the Senate Republican Caucus on legislation, including factual issues regarding redistricting.

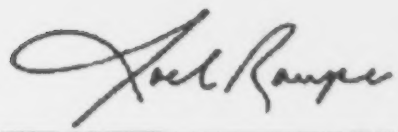
3. I have been custodian of Senator Ballantine's Email from the General Assembly redistricting staff and have made a thorough search of communications from said staff sent to the Minority Leader during the January1, 2003 to January 1, 2004 time frame. My search reveals no Email from said staff alerting Senator Ballantine to population changes the Census Bureau found in Orange County.

4. I do not recall receiving this information from said staff.

5. Attached to this affidavit as Exhibits are true copies of the documents showing transmittal of information to Senator Ballantine immediately prior to the 2003 Extra Session on Redistricting of the North Carolina General Assembly in November 2003.

Pursuant to 28 USC §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 3rd day of January, 2008



Joel Raupe

APPENDIX G

UNITED STATES DEPARTMENT OF COMMERCE
Economics and Statistics Administration
U.S. Census Bureau
Washington, DC 20233-0001

May 14, 2003

Mr. Stephen H. Halkiotis
Chair, Board of County Commissioners
Orange County
P.O. Box 8181
Hillsborough, NC 27278

Dear Mr. Halkiotis:

The U.S. Census Bureau is currently conducting the Count Question Resolution (CQR) program. As noted in the enclosed brochure, the CQR program comprises the procedures and guidelines for receiving, processing, and responding to questions regarding the officially released Census 2000 counts.

Under the CQR program, Census Bureau staff initiated an internal review of census files. Our research found an error in the geographic assignment of group quarters in various blocks within the town of Chapel Hill. In addition, we identified housing units that were erroneously included in Census 2000 due to processing errors.

These errors affect Orange County and town of Chapel Hill. Consequently, Orange County will soon receive a Certification Letter from the Director of the Census Bureau stating Orange County's housing unit and associated population counts.

If you have additional questions, please have a member of your staff contact Mr. Robert Rinaldi, Assistant Division Chief, Decennial Management Division, at 1-866-546-0527.

Sincerely,

Teresa Angueira
Chief, Decennial Management Division

Enclosure

UNITED STATES DEPARTMENT OF COMMERCE
Economics and Statistics Administration
U.S. Census Bureau
Washington, DC 20233-00001

May 14, 2003

The Honorable Rosemary Waldorf
Mayor of Chapel Hill
306 N. Columbia Street
Chapel Hill, NC 27516

Dear Mayor Waldorf:

The U.S. Census Bureau is currently conducting the Count Question Resolution (CQR) program. As noted in the enclosed brochure, the CQR program comprises the procedures and guidelines for receiving, processing, and responding to questions regarding the officially released Census 2000 counts.

Under the CQR program, Census Bureau staff initiated an internal review of census files. Our research found an error in the geographic assignment of group quarters in various blocks within the town of Chapel Hill. In addition, we identified housing units that were erroneously included in Census 2000 due to processing errors.

These errors affect Orange County and town of Chapel Hill. Consequently, Orange County will soon

receive a Certification Letter from the Director of the Census Bureau stating Orange County's housing unit and associated population counts.

If you have additional questions, please have a member of your staff contact Mr. Robert Rinaldi, Assistant Division Chief, Decennial Management Division, at 1-866-546-0527.

Sincerely,

Teresa Angueira
Chief, Decennial Management Division

Enclosure

Appendix H

UNITED STATES DEPARTMENT OF COMMERCE
Economics and Statistics Administration
U.S. Census Bureau
Washington, DC 20233-00001
OFFICE OF THE DIRECTOR

Oct. 06, 2003

Mr. Terrence Sullivan
Director of Research
North Carolina General Assembly
LOB, Room 545
Raleigh, NC 27603

Dear Mr. Sullivan:

At the most recent summer meeting of the NCSL's Redistricting Task Force, representatives from the states requested that our office provide copies of the certification letters issuing the revised census counts resulting from the Count Question Resolution Program. The Census Bureau currently is sending these letters to the respective communities. These letters are issued as each count question results in a change to the official count for a governmental entity such as a city, county or minor civil division. I am enclosing a copy of the letter recently sent to a governmental entity in your state.

If you would prefer not to receive copies of these letters please let me know. The information also is available via our American FactFinder located at http://factfinder.census.gov.
Please make a note, this program will expire September 30, 2003. If I can be of further assistance, please call on (301) 763-4039.

Sincerely,

Cathy McCully, Chief
Census Redistricting Date Office

Enclosures

cc: Bill Gilkeson, Legislative Services
Daniel Frey, GIS Programmer/Analyst
Gerry F. Cohen, Director of Bill Drafting
Legislative Services Office

UNITED STATES DEPARTMENT OF COMMERCE
Economics and Statistics Administration
U.S. Census Bureau
Washington, DC 20233-0001
OFFICE OF THE DIRECTOR

September 30, 2003

FROM THE DIRECTOR
U.S. CENSUS BUREAU

This is an official statement of the revised Census 2000 population and housing unit counts for Orange County, North Carolina, including corrections made through September 30, 2003.

According to the official returns of the TWENTY-SECOND DECENNIAL CENSUS OF THE UNITED STATES, on file in the U.S. Census Bureau, the counts as of April 1, 2000, for Orange County, North Carolina, are:

Population	115,531
Housing Units	47,706

Sincerely,

Charles Louis Kincannon

This statement is being sent to the highest elected official of this governmental unit, the Secretary of State, and other state officials.

Census counts used for Congressional apportionment and legislative redistricting and the Census 2000 data products will remain unchanged. The Census Bureau will include the corrections in the errata information to be made available via the Internet on the *American FactFinder* system and used specifically to modify the decennial census file for use in yearly postcensal estimates beginning in December 2002.

Details regarding the Census Bureau's calculation of these figures are attached. If you require additional information, please call the Census Bureau's Count Question Resolution program staff, on 1 (301) 763-4444.

USCENSUSBUREAU

BEST AVAILABLE COPY

Area Name	Original Tabulation Counts		Corrected Count		Change	
	Total Housing Units	Total Population	Total Housing Units	Total Population	Total Housing Units	Total Population
Orange County	49,289	118,227	47,706	115,531	-1583	-2696
* Population counts include population from housing units and group quarters, where applicable.						